

To: Reynolds, Thomas[Reynolds.Thomas@epa.gov]
From: Allen, Laura
Sent: Tue 9/8/2015 5:24:52 PM
Subject: RE: September 8 -- Greenwire is ready

EPA's spill pales in comparison to everyday mine leaks

Manuel Quiñones, E&E reporter

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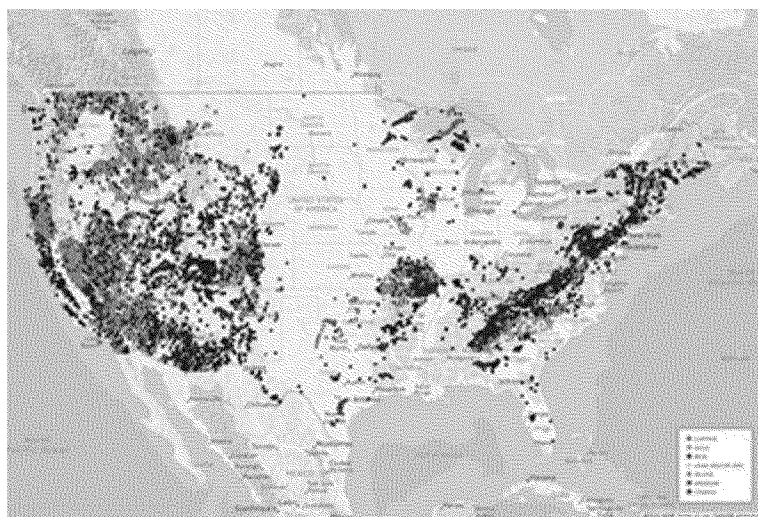
Politicians, activists, tribes and media outlets have expressed shock at last month's abandoned mine spill in Colorado, which sent 3 million gallons of polluted water down the Animas River.

But environmental advocates and groups that have for decades been trying to clean up the legacy of unregulated mining say the incident pales in comparison to the broader problem of tens of thousands of mines leaking across the country.

"The Gold King [mine] was discharging pollutants before the spill and continues after the spill. That is a well-documented situation," said Ty Churchwell, backcountry coordinator in Colorado for the conservation group Trout Unlimited.

U.S. EPA and its contractor triggered the Gold King mine blowout while trying to study ways of cleaning up the site. A collapse had clogged a mine portal, and water was dangerously building up.

"Most draining mines just drain," Churchwell said in an interview. "Thousands and thousands of these draining mines all over the United States."



Map of abandoned mine sites by the group SkyTruth based on U.S. Geological Survey data. Click [here](#) to view the interactive map. Map courtesy of SkyTruth.

Though the true scope of the abandoned mine problem around the United States is unknown, groups such as mining watchdog Earthworks and the Western Governors' Association and agencies including EPA and the U.S. Geological Survey have some rough estimates.

The USGS database includes more than 260,000 sites labeled as past producers. Earthworks has the number closer to 500,000, mostly in the western United States.

The Government Accountability Office released a report on the issue in 2011, which said the public watchdog had developed a uniform definition of abandoned hardrock mines in 2008.

GAO said it had determined there were at least 161,000 abandoned hardrock mine sites in 12 Western states and Alaska. The agency said 33,000 of the sites had degraded the environment by contaminating waters or leaving "arsenic-contaminated" waste piles.

Churchwell said, "Whether it's 100,000 or 500,000, that's hundreds of thousands too many." And he said the Animas spill "has alerted the nation to the much more broad problem that many people were not paying attention to before."

Many environmental advocates and supportive Democrats on Capitol Hill have seemed hesitant to take aim at EPA, the agency trying to address the potential hazard.

Critics, including many congressional Republicans, have blasted the agency not only for the Colorado spill but also for not turning over enough related documents.

The Navajo Nation has also been particularly tough in its criticism of EPA. Environmental activist Erin Brockovich is scheduled to visit the reservation today to see the spill's effect on the San Juan River.

"The impact has been devastating to our culture and economy, as well as to the peace of mind of our people," said Navajo Nation Attorney General Ethel Branch upon announcing that Hueston Hennigan LLP will represent the tribe in claims against EPA.

"With unknown amounts of this fine sediment in our water, we know we face the risk of reliving this nightmare with every major increased water flow event affecting the river," said Branch.

Alan Septoff, spokesman for Earthworks, likewise faulted the agency. "The EPA screwed up, there's no doubt about it. But why they screwed up is instructive."

Septoff also said the spill was inevitable even without the agency's mistake. "Because it was draining pollution into the Animas River already and threatened to do more, it was going to happen sooner or later. If they left it alone, same thing was going to happen."

Earthworks has long been lobbying for reform of the 1872 mining law, including charging mining companies a fee for cleaning up mines that were abandoned before modern environmental laws.

Gold King started operating in the late 1800s and ran through the early 1920s. EPA works on a polluter-pays principle, but like other such sites, Gold King has a complicated ownership and liability history.

At one point, Sunnyside Gold Corp., the owner of a nearby mine that shut down in 1991, agreed to plug its site and clean up operations in the area. But water started building up, and a treatment system ran into legal and financial troubles, EPA said. The agency was left holding the bag to prevent disaster.

Septoff said the spill has raised the alarm on the wider problem. "The Animas is shaking stuff loose, politically speaking," he said.

He added, "There's no dedicated funding source to clean up abandoned hardrock mines. There isn't even money to get a good handle of how bad the problem is."

Debate over solution

Arizona Rep. Raúl Grijalva, top Democrat on the House Natural Resources Committee, has already introduced mining reform legislation (*Greenwire*, Feb. 12). Sen. Martin Heinrich (D-N.M.) has said he will, too, once Congress reconvenes.

The National Mining Association has opposed current mining reform legislation, saying it would add too much red tape and hurt resource independence. The group has called the cleanup fee a dirt tax.

NMA spokesman Luke Popovich recently expressed support for good Samaritan legislation, which would provide groups with liability protections for pitching in to clean up water pollution from old mines.

Late in 2012, EPA released a memo meant to appease concerns. It said groups don't need a permit for certain discharges connected with abandoned hardrock mine cleanups under the Superfund law. Former Sen. Mark Udall (D-Colo.) was a main proponent.

But groups like Trout Unlimited and local regulators, who often help clean up contamination and hazards from abandoned mines, say the document was not enough to clear worries about getting involved with point source pollution.

"They're the only ones that can work within the current legal framework to address the problem," Churchwell said about the "underfunded and understaffed" EPA.

"We need to provide and find some mechanism to increase the capacity of those willing to join in the fight of cleaning up those abandoned mines," he said, noting that there have been at least two other wastewater releases into the Animas in recent decades.

Rep. Scott Tipton (R-Colo.) and Sen. Michael Bennet (D-Colo.) have expressed their intention of introducing good Samaritan cleanup legislation in the near future. Plans were underway even before the spill (*E&E Daily*, June 9). But details remain unclear.

Despite bipartisan support, such a bill is by no means guaranteed passage. Some Democrats are wary of reopening discussions surrounding the Clean Water Act and sapping support from broader reform.

"It doesn't address the funding issue," Septoff said. "That is the real problem. It may suck the political air out of efforts to really address the problem."

Arizona State University law professor Rhett Larson suggested in a *Wall Street Journal* op-ed that states create credits to encourage mining companies to clean up abandoned mines.

But groups like Earthworks have expressed opposition to companies getting liability protections. Septoff wonders what a private company would do if it had caused the Animas spill.

"There's a historic problem, and then there's the fact that we're not learning from this mistake," said Septoff. "That is the preferred solution to this."

Beyond abandoned mines, groups, tribes and communities petitioned the administration last month to initiate rulemaking to prevent future spills from mine sites (*Greenwire*, Aug. 25, 2015). They also called for reform after the Mount Polley mine tailings spill in Canada, which released more than 1 billion gallons of waste.

Popovich called the rulemaking petition "transparent opportunism on the part of mining's critics to distract policymakers away from adopting practical measures." He said, "U.S. mines don't need a poorer permit policy; they

already have one of the most inefficient in all the world's mining regions."

Coal

Unlike hardrock mining, coal sites abandoned prior to modern environmental laws do have a dedicated funding stream. Currently producing companies pay a fee into the abandoned mined land (AML) reclamation fund.

The Interior Department's Office of Surface Mining Reclamation and Enforcement said last year it had collected more than \$10 billion in fees and distributed more than \$7.8 billion. But the shortfall remains in the billions, and there is also no national inventory of sites.

Regulators in Pennsylvania, which has the highest number of AML sites, say mine waste has fouled more than 5,000 miles of the state's streams, many of which drain into the Chesapeake Bay (*Greenwire*, Aug. 31).

Nonprofit groups have also been deeply involved in helping clean up abandoned mine sites and acid mine drainage. They also want stronger good Samaritan protections, related to not only the Clean Water Act but also the Surface Mining Control and Reclamation Act. But hardrock mining cleanup advocates sometimes say the issues are different and should be addressed separately (*Greenwire*, Dec. 18, 2012).

Congress this fall will be discussing issues related to AML, particularly the desire of states to reauthorize the fee past 2021. Some greens want to raise the fee to pre-2006 levels. But companies dealing with the coal slump warn they may not be around to pay it.

Twitter: [@ManuelQ](#) Email: mquinones@eenews.net

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